



STATE OF INDIANA

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March 26, 2015

Ms. Julie E. Hoepfner
1524 Old Orchard Rd.
Vincennes, IN 47591

Re: Formal Complaint 15-FC-65; Alleged Violation of the Access to Public Records Act by the Grant County Prosecutor's Office

Dear Ms. Hoepfner,

This advisory opinion is in response to your formal complaint alleging the Grant County Prosecutor's Office ("Prosecutor") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* The prosecutor's office has issued a response via James D. Luttrull, Jr., Esq. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on February 12, 2015.

BACKGROUND

Your complaint dated February 18, 2015, alleges the Grant County Prosecutor's Office violated the Access to Public Records Act by not providing records responsive to your request in violation of Ind. Code § 5-14-3-3(b).

On January 10, 2015, you sent a written request for information regarding a criminal case to the Supreme Court and the Prosecutor. You were informed by the Grant County Prosecutor's Office the request would need to be sent to the Clerk's Office, which you did on January 1, 2015. You allege the records you sent were "sparse" and did not contain all the information you desired. You sent a second request on January 31, 2015. The records provided from this request did not include the witness statements and psychological report you desired. On February 18, 2015, the Prosecutor's Office informed you they could not release the requested information.

On February 24, 2015, the Prosecutor's office responded. Mr. Luttrull contends you did receive the information pursuant to your request and the remaining information is both investigatory in nature or work product and therefore exempt from APRA.

ANALYSIS

The public policy of the APRA states that “a (p)roviding person with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” See Ind. Code § 5-14-3-1. The Grant County Prosecutor’s Office is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(n)(1). Any person has the right to inspect and copy the Prosecutor’s public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14- 3-3(a).

In this case, you allege after sending the file requests, the Prosecutor’s Office failed to include all records responsive to the request. The prosecutor’s office had apparently withheld witness statements that you believe to be a matter of public record.

Indiana Code § 5-14-3-4(b)(1) provides that a law enforcement agency has discretion over the disclosure of investigatory records. An investigatory record is “information compiled in the course of the investigation of a crime.” *See* Ind. Code § 5-14-3-2(h). The investigatory records exception does not apply only to records of ongoing or current investigations; rather, it applies regardless of whether a crime was charged or even committed. The exception applies to all records compiled during the course of the investigation, even after an investigation has been completed. The investigatory records exception affords law enforcement agencies broad discretion in withholding such records. *See Opinion of the Public Access Counselor 09-FC-157.*

APRA gives broad discretion to investigatory agencies in choosing to withhold records which may be considered investigatory in nature. Here the Prosecutor has alleged the records are in fact investigatory and the Prosecutor has exercised the discretion to withhold the supplementary material. However, the complaint also alleges in a February 18, 2015 phone call, the Prosecutor’s Office told you they would not release the information and a lawyer would need to make the request. If this is true, it appears the Prosecutor’s Office has not complied with the APRA provision found at Ind. Code § 5-14-3-9 et. al.. The complainant should have been provided a reason as to the refusal and anyone has standing to make a public records request.

To the extent information is filed with the Court, it ceases to be investigatory and becomes part of the Court’s file. Everything in the Court file, unless inherently confidential or sealed by a judge, is available to be inspected. Any work product or other material compiled in the course of bringing the case to trial is investigatory records as the Prosecutor is germane to the law enforcement process.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Grant County Prosecutor’s Office has not violated the Access to Public Records Act by not

releasing the investigatory records, however, the Prosecutor should be mindful of the correct way to deny a records request.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', with a long, sweeping underline.

Luke H. Britt
Public Access Counselor

Cc: Mr. James Luttrull, Jr., Esq.